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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7418 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

GULABCHAND CHHAGANLAL SHAH

Versus

COMPETENT AUTHORITY AND DEPUTY COLLECTOR (ULC)

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 21/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at
Rajkot (respondent No.1 herein) on 7th November 1985
under sec. 21(2) of the Urban Land (Ceiling and
Regulation) Act, 1976 (the Act for brief) as affirmed in

appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 21st April 1988 in Appeal No. Rajkot-98 of 1985 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No.1 cancelled the permission granted by him under sec. 21(1) of the Act by his order passed on 15th June 1980 but communicated on 27th August 1980 with respect to Plots Nos. 3, 19 and 21 from Survey No. 1035 and Plots Nos. 34,37, 42 and 71 from Survey No. 123/124 in all admeasuring 3718.99 square meters at Raiya within the urban agglomeration of Rajkot (the disputed lands for convenience).

2. The facts giving rise to this petition move in a narrow compass. It appears that the petitioner applied for permission under sec. 21(1) of the Act qua the disputed lands. Such permission came to be granted by the order passed by respondent No. 1 on 15th June 1980 but communicated on 27th August 1980 on certain terms and conditions. Its copy together with the schedules annexed thereto is at Annexure A to this petition. One condition required the petitioner to commence the construction activity within one year from the date of communication of the order under intimation to respondent No. 1. Another condition required the petitioner to complete the construction work according to the scheme in all respects within 5 years from the date of the communication of the order at Annexure A to this petition. It appears that the petitioner did not or could not start the construction activity within the stipulated time-limit of one year. Thereupon a show-cause notice came to be issued under sec. 21(2) of the Act on 7th November 1981 calling upon the petitioner to show cause why the permission granted by the order at Annexure A to this petition should not be cancelled. It appears that the aforesaid show-cause notice came to be withdrawn by the order passed by respondent No. 1 on 8th December 1983 presumably on assurance that the petitioner would be able to complete the scheme within the stipulated time-limit of 5 years. Its copy is at Annexure B to this petition. The petitioner did not or could not complete the construction work in accordance with the scheme in all respects within the stipulated time-limit of 5 years. It appears that the petitioner thereupon applied on 22nd August 1985 for extension of the time-limit for completion of the scheme. Its copy is at Annexure D to this petition. Instead of granting such extension, respondent No. 1 issued one show-cause notice on 10th September 1985 under sec. 21(2) of the Act calling upon the petitioner to show cause why the permission granted by the order at Annexure A to this petition should not be

cancelled. Its copy is at Annexure C to this petition. After hearing the petitioner, by his order passed on 7th November 1985 under sec. 21(2) of the Act, respondent No.1 cancelled the permission granted by the order at Annexure A to this petition. Its copy is at Annexure E to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. A copy of the memo of appeal is at Annexure F to this petition. It came to be registered as Appeal No. Rajkot-98 of 1985. By the order passed on 21st April 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure G to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure E to this petition as affirmed in appeal by the appellate order at Annexure G to this petition.

3. Delay in completion of the scheme for which the permission under sec. 21(1) is granted can be condoned by imposition of a suitable penalty on the land-holder if such delay is not on account of unjustifiable grounds in view of the rulings of this Court in the case of Givndlal Chunilal Dalvadi v. State of Gujarat and others reported in 1994(1) Gujarat Current Current Decisions 526 and in the case of Suvarnaben, wd/o Thakorlal Gordhandas and another v. The Competent Authority and Additional Collector (ULC) and another reported in AIR 1995 Gujarat 13. It would therefore be necessary to find out whether or not in this case the delay in completion of the scheme was not on unjustifiable grounds.

4. It is not in dispute that one show-cause notice under sec. 21(2) of the Act was issued on 7th November 1981 on the ground of non-commencement of the construction activity within the time-limit of one year. It came to be revoked on 8th December 1983 by the order at Annexure B to this petition. It is obvious that, when a show-cause notice under sec. 21(2) of the Act is issued, the land-holder would not undertake the construction activity as he would not be sure of the fate of the proceeding arising from such show-cause notice under sec. 21(2) of the Act. The intervening period of little above 2 years from the date of the show-cause notice issued on 7th November 1981 and its withdrawal on 8th December 1983 by the order at Annexure B to this petition should therefore be excluded from the period of 5 years for completion of the construction work in all respects. The delay in completion of the scheme cannot therefore be said to be on account of unjustifiable

grounds.

5. The question would then arise as to what penalty should be imposed on the petitioner for delay in completing the scheme in question. By the order at Annexure A to this petition, the petitioner was required to raise 27 dwelling units of not exceeding 40 square meters in the plinth area on the disputed lands. The cost per dwelling unit would be around 25000 as transpiring from the cost structure contained in schedule 2 annexed to the order at Annexure A to this petition. The amount representing 10% of the cost per dwelling unit should be imposed by way of penalty on the petitioner. For 27 units the amount of penalty would work out at Rs. 67,500/-. The petitioner deserves to be directed to pay this amount of Rs. 67500/- in the Treasury at Rajkot and to produce the challan representing such payment within six weeks from today.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 7th November 1985 under sec. 21(2) of the Act at Annexure E to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 21st April 198 in Appeal No. Rajkot-98 of 1985 at Annexure G to this petition is quashed and set aside on condition of payment by the petitioner the penalty in the sum of Rs. 67500/- by means of payment in the Treasury at Rajkot and producing its challan before respondent No. 1 within six weeks from today. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.